

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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NIKCI BOYD,

Plaintiff,

V.

PUBLIC DEFENDER OFFICE,

Defendant.

Case No. 2:13-cv-01849-APG-PAL

REPORT OF FINDINGS AND RECOMMENDATION

(IFP App – Dkt. #9)

13 This matter is before the court on Plaintiff Nikci Boyd's Response (Dkt. #8) and
14 Plaintiff's Application to Proceed In Forma Pauperis (Dkt. #9), both filed September 3, 2014.
15 The court has considered the Response and Application.

16 Boyd is a prisoner proceeding in this action pro se. On October 10, 2014, she filed an
17 Application to Proceed In Forma Pauperis (Dkt. #1). The court entered an Order (Dkt. #4) on
18 March 31, 2014, denying the Application without prejudice because Boyd failed to submit (a) a
19 certified copy of her inmate trust account statement for the six months immediately preceding
20 filing this case; and (b) a financial affidavit certified by the institution where Boyd was
21 incarcerated as required by 28 U.S.C. § 1915(a). The court allowed Boyd an opportunity to file a
22 completed application with the required financial information. The court warned Boyd that
23 failure to comply with the Order could result in a recommendation to the district judge that this
24 case be dismissed.

25 The Clerk of Court mailed the Order, and on April 8, 2014, it was returned as
26 undeliverable. *See* Mail Returned Undeliverable (Dkt. #5). On July 15, 2014, the court entered
27 an Order to Show Cause (Dkt. #6) directing Boyd to show cause in writing no later than August

28 | //

1 11, 2014, why this case should not be dismissed for her failure to comply with LSR 2-2 and the
2 court's Order.

3 On September 3, 2014, Boyd filed the Response, which indicates that her address was
4 correct, but she never received the mail, and she does not know why. She represents she was
5 transferred to the Clark County Detention Center and she will keep the court informed of her
6 address going forward. She states she did not receive the Order to Show Cause until August 25,
7 2014, and requests an extension of time to respond because of late notice. Additionally, she
8 states she was injured, had sutures, and a severe allergic reaction to medication she was given.
9 The court is satisfied with Boyd's explanations for her late response and finds sanctions are not
10 warranted.

11 Additionally, Boyd has also filed a new Application to Proceed In Forma Pauperis (Dkt.
12 #9). However, this Application is also incomplete. Boyd has still not submitted a certified copy
13 of her inmate trust account statement for the six months preceding this case, nor has she included
14 a financial affidavit certified by the Clark County Detention Center. Although Boyd has
15 included a printout from the Clark NV Commissary indicating she has a zero balance, this does
16 not satisfy the requirements of 28 U.S.C. § 1915(a).

17 Boyd has failed to comply with the court's instructions and has not filed a completed
18 application to proceed in forma pauperis. In addition, the court has reviewed her complaint
19 which seeks to sue the "Public Defender's Office All the Attorneys." The caption alleges claims
20 for legal malpractice, intentional negligence, coercion, duress, and personal injury. The
21 complaint does not allege any specific facts, is difficult to follow, and is illegible in parts. Boyd
22 asserts that attorneys should not cause "severe duress by willful negligence that would cause
23 personal injury on their client by their harassment or negligence to protect them." It appears she
24 is dissatisfied with representation she received from a public defender who took some action
25 without informing her.

26 As a general matter, federal courts are courts of limited jurisdiction and possess only that
27 power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004).
28 Boyd has not alleged a basis to assert federal jurisdiction in this case. No federal question

1 jurisdiction pursuant to 28 U.S.C. § 1331 exists. There is also no basis for asserting diversity
2 jurisdiction pursuant to 28 U.S.C. § 1332 as Boyd lives in Nevada and is attempting to sue
3 Nevada attorneys employed by the Public Defender's Office.. Because Boyd has twice failed to
4 file a completed application to proceed in forma pauperis, and because Boyd's complaint does
5 not state a federal claim, and amendment would not cure these defects, the court will recommend
6 that her Application be denied.

7 **IT IS RECOMMENDED** that Plaintiff's Application to Proceed In Forma Pauperis
8 (Dkt. #9) be DENIED with prejudice for failure to comply with the court's Order (Dkt. #4) and
9 failure to comply with the requirements of 28 U.S.C. § 1915(a), applicable to prisoners seeking
10 leave to proceed in forma pauperis.

11 Dated this 15th day of September, 2014.

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13 
14 PEGGY A. LEEN
15 UNITED STATES MAGISTRATE JUDGE
16

NOTICE

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
19 after being served with these findings and recommendations, any party may file written
20 objections with the court. Pursuant to Local Rule of Practice IB 3-2(a), any party wishing to
21 object to the findings and recommendations of a magistrate judge shall file and serve *specific*
22 *written objections* together with points and authorities in support of those objections, within
23 fourteen days of the date of service of the findings and recommendations. The document should
24 be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties
25 are advised that failure to file objections within the specified time may waive the right to appeal
26 the district court's Order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and
27 authorities filed in support of the specific written objections are subject to the page limitations
28 found in LR 7-4.